NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL,
FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CLEM ABRAMS et al., Plaintiffs and Appellants, v. CITY OF SAN DIEGO, Defendant and Respondent.	D038402 (Super. Ct. No. 655468)
MESA SHOPPING CENTER EAST, Real Party in Interest and Respondent.	

(Filed Oct. 29, 2002)

APPEAL from a judgment of the Superior Court of San Diego County, Wayne L. Peterson, Judge. Affirmed.

Clem Abrams and John Bohannon (together Abrams) appeal a judgment denying their petition for a writ of mandate seeking to require the City of San Diego (City) to adjust the cost reimbursement lien it imposed against their property.[1] On appeal Abrams contends there is insufficient evidence to support City's decision increasing

[1] Although the trial court designated its decision in this case as an *order* denying Abrams's petition, the court's decision was in effect a final judgment that is appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(1).

the amount of its reimbursement lien because (a) City did not property apply the *rough proportionality* test, and (b) there is insufficient evidence to support a finding of rough proportionality in the circumstances of this case. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[2]

In 1987 City, by its city council (Council), approved Mesa Shopping Center East's (MSCE) development of its 23.8-acre site for residential and commercial purposes, subject to the condition that certain off-site public improvements be constructed. Those improvements included the construction of Westview Parkway, Galvin Avenue, and water and sewer facilities. The street improvements required rights-of-way over Abrams's property, which is adjacent to MSCE's property.

In February 1990 Council established a cost reimbursement district that included MSCE's property, Abrams's property, and other nearby properties benefiting from MSCE's public improvements.[3] MSCE would be reimbursed for part of the costs of those improvements if the other properties within the district were developed within 20 years. The initial estimated cost of those improvements was

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[2] In this section we restate much of the factual and procedural background section of our prior opinion in *Abrams v. City of San Diego* (Mar. 6, 2000, D029343) [nonpub. opn.].

[3] Government Code section 66487, subdivision (c) allows a local agency to establish a local benefit district for the "levy and collection of such charge or costs from the property benefited" to reimburse developers for construction of required improvements that benefit other property owners.

$2,830,809, of which MSCE would bear $1,401,115; the other district property owners would pay a certain share of the remaining costs if their properties were developed within 20 years. A cost reimbursement lien was imposed on each district property to secure the obligation to pay its share.[4] In February 1990 Council approved a cost reimbursement lien of $570,948 on Abrams's property. Abrams did not challenge that lien.

In September 1990 Council approved an increase in the cost reimbursement lien on Abrams's property to $998,299 to reflect additional improvements and an increase in the estimated improvement costs. The increased lien included an increase in the estimated cost of acquisition of rights-of-way on Abrams's property from $65,640 to $200,750. Abrams did not challenge that increased lien.

In August 1990 City filed a complaint in eminent domain against Abrams and other district property owners to condemn property required for MSCE's street improvements. Pursuant to a March 1992 settlement between City and Abrams, a judgment was entered condemning that part of Abrams's property required for the street rights-of-way and other improvements and awarding Abrams

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[4] As we noted in *Abrams v. City of San Diego* (Apr. 24, 1996, D019566) [nonpub. opn.], a cost reimbursement lien is a variation on the theory of special assessments in that one property owner (e.g., MSCE), instead of a government agency (e.g., City), advances funds necessary for public improvements, and the government agency (e.g., City) uses its power to supervise a subdivision by ordering equitable distribution of those costs among benefited property owners. (Gov. Code, § 66485 et seq.; see *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 161.)

$570,000 plus interest of $71,358.40 for the taking. The remainder of Abrams's property continued to be encumbered by the cost reimbursement lien.

In June 1992 Council approved an increase in the cost reimbursement lien on Abrams's property to $1,543,550.18, reflecting the actual costs of acquiring Abrams's rights-of-way in the condemnation action and other costs of MSCE's improvements. Abrams filed a complaint for declaratory and injunctive relief against City and a petition for writ of administrative mandamus against City and MSCE as the real party in interest. The trial court granted the requested writ and remanded the matter to City to show a factually sustainable proportionality between the effects of the cost reimbursement district improvements and the $1.543 million exaction or reimbursement lien against Abrams's property. On appeal by MSCE, we affirmed the trial court's judgment. (*Abrams v. City of San Diego, supra*, D029343.)

In June 2000 Council accepted a report by consultant Jerome Fournier and, based on that report, found that "a factually sustainable proportionality exists" between the amount of the June 1992 reimbursement lien against Abrams's property and the benefit of MSCE's improvements to that property. Fournier's report included copies of an appraisal by Randy Tagg and a development cost estimate by Rick Engineering Company. The report found that Abrams was relieved of future development costs because of MSCE's public improvements and therefore could immediately seek rezoning of the property from agricultural to multi-family dwelling use with a minimum density of 87 dwelling units. Tagg's appraisal showed that in June 1992 Abrams's property would have had a market value of about $2.4 million were it developed with 87

multi-family dwellings and a value of only $225,000 if MSCE's public improvements were not made and the property continued to be zoned for agricultural use. Thus, the property's value increase by over $2 million because of MSCE's public improvements. Furthermore, after deducting the $1.543 million total reimbursement lien from the property's $2.4 million value after MSCE's improvements, Abrams's property had an increase in net value to about $850,000 because of those improvements.

Abrams filed a supplemental petition for writ of mandate, arguing City did not comply with the trial court's judgment granting the writ of mandate because it did not show the requisite proportionality between the increased reimbursement lien and the benefit of the improvements to his property, and that a traffic study is required to show the required proportionality. The trial court denied the supplemental petition, stating:

> "The Court of Appeal's opinion does not require a calculation of the traffic that [Abrams's] parcel might someday generate. The better way to identify benefit is to determine what a willing buyer would pay for the property before and immediately after the improvements were constructed, as the City has done. Using this standard of proportionality, the record establishes substantial evidence of proportionality. . . . "

Abrams timely filed a notice of appeal.

DISCUSSION

I

Standard of Review

On review of an administrative decision that does not involve or affect a fundamental vested right, a trial court reviews the administrative record to determine whether the administrative findings are supported by substantial evidence and whether the agency committed any errors of law. (*301 Ocean Ave. Corp. v. Santa Monica Rent Control Bd.* (1991) 228 Cal.App.3d 1548, 1556.) On appeal, a reviewing court also applies the substantial evidence standard in reviewing an agency's factual findings. (*Ibid.*; *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.) In applying the substantial evidence standard of review, "we must examine all relevant evidence in the entire [administrative] record, considering both the evidence that supports the administrative decision and the evidence against it. . . . " (*Desmond, supra*, at p. 335.) Substantial evidence is evidence of ponderable legal significance that is reasonable in nature, credible and of solid value. (*Ibid.*) It has alternatively been described as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. (*Ibid.*) We resolve all reasonable doubts and make all reasonable inferences in favor of the administrative findings and decision. (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117.)

As we previously concluded in *Abrams v. City of San Diego, supra*, D029343, the cost reimbursement lien imposed on Abrams's property does not limit his ability to use the property and therefore does not involve or affect a fundamental vested right. Therefore, the trial court properly

applied the substantial evidence standard of review in this case in reviewing City's administrative findings and decision, and we apply that standard of review on appeal.

To the extent City or the trial court decided a question of law, we review that decision de novo and independently determine that question on appeal. (*Galante Vineyards v. Monterey Peninsula Water Management Dist., supra*, 60 Cal.App.4th at p. 1117.)

II

Heightened Scrutiny Standard Requiring Showing of Rough Proportionality Applies to Exaction Imposed in This Case

We concluded in *Abrams v. City of San Diego, supra*, D029343, that the legal standards set forth in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374 apply to the monetary exaction imposed by City in this case. In *Nollan*, residential property owners challenged a California Coastal Commission requirement that they grant an easement for public beach access across their beachfront property as a condition to approval of a building permit for construction of a larger house. (*Nollan, supra*, at p. 827.) *Nollan* concluded there must be an essential nexus between the exaction imposed and the effect of the permitted use of the property. (*Id.* at pp. 837-838.)

In *Dolan*, a commercial property owner challenged certain public floodplain and pathway dedications of her property that the City of Tigard required as a condition to approval of a permit for development of her property. (*Dolan v. City of Tigard, supra*, 512 U.S. at pp. 379-382.) Acknowledging *Nollan's essential nexus* requirement was

satisfied in its case, *Dolan* addressed the question of the required degree of connection between the exactions imposed by the city and the projected impact of the proposed development. (*Id.* at pp. 377, 386-388.) *Dolan* concluded that the *takings clause* of the Fifth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment, requires rough proportionality between the exactions imposed and the projected impact of the proposed development. (*Id.* at pp. 383-384, 391.) *Dolan* stated:

> "No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." (*Id.* at p. 391, fn. omitted.)

Dolan concluded the city "must make some effort to quantify its findings" in support of the required dedication "beyond the conclusory statement that it could offset some of the traffic demand generated." (*Id.* at pp. 395-396.)

The *Dolan/Nollan* test requiring heightened scrutiny also applies to monetary exactions imposed as a condition to issuance of a development permit in circumstances in which the Fifth Amendment takings clause applies. (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 859, 866, 876.) *Ehrlich* stated: "When [monetary] exactions are imposed . . . neither generally nor ministerially, but on an individual and discretionary basis, we conclude that the heightened standard of judicial scrutiny of *Nollan* and *Dolan* is triggered." (*Ehrlich, supra*, at p. 876.) It noted that *Nollan* was concerned with "the *nature* of the relationship between a proposed development and a governmental exaction" and *Dolan* was concerned with "the *degree* of the

required connection." (*Id.* at p. 879, original italics.) *Ehrlich* stated:

> "We view the [*Dolan*] requirement that the local government demonstrate a *factually* sustainable proportionality between the effects of a proposed land use and a given exaction as one which furthers the assurances implicit in the *Nollan* test that the condition at issue is more than theoretically or even plausibly related to legitimate regulatory ends." (*Id.* at p. 880, original italics.)

It concluded: "[W]hen a local government imposes special, discretionary permit conditions on development by individual property owners . . . *Nollan* and *Dolan* require that such conditions, whether they consist of possessory dedications or monetary exactions, be scrutinized under the heightened standard." (*Id.* at p. 881.)

As we concluded in *Abrams v. City of San Diego, supra*, D029343, because the cost reimbursement lien on Abrams's property was imposed by City on an individual and discretionary basis the heightened scrutiny standard of *Dolan/Nollan* applies, including the requirement that the monetary exaction (e.g., cost reimbursement lien) have a rough proportionality to the impact on (e.g., benefit of the public improvements to) Abrams's property. Although *Nollan, Dolan*, and *Ehrlich* involved circumstances in which dedications were required or monetary exactions were imposed to compensate for or mitigate negative impacts of the proposed developments, we conclude the *Dolan/Nollan* test also applies to cases in which monetary exactions are imposed for the positive impacts of public improvements on particular properties. In *White v. County of San Diego* (1980) 26 Cal.3d 897, the county imposed special assessments on properties to pay part of the costs

of widening and improving an adjacent street. (*Id.* at pp. 900-902.) The special assessments included the cost of acquiring rights-of-way. (*Id.* at p. 902.) Pursuant to the county's policy, each property was "assessed back" the amount paid for the right-of-way taken from that property, except those properties that had previously dedicated rights-of-way to the county were not so assessed. (*Ibid.*) Because of varying degrees of negotiation or litigation by property owners, there were disparities in the amount of compensation owners received for their rights-of-way and consequent disparities in the amounts assessed back to the properties of those owners for the right-of-way compensation. (*Id.* at p. 903.) *White* stated: "Property may be specially assessed only for improvements that provide it benefits beyond those received by the public. [Citation.]" (*Id.* at p. 904.) *White* concluded the record showed the project benefited all of the abutting properties by improving access, reducing congestion, improving traffic controls, improving drainage, and adding curbs, gutters, and sidewalks. (*Ibid.*) Although "an assessment must be generally proportional to benefits," the amount of each assessment need not be measured by the precise amount of benefit received by the property owner. (*Id.* at p. 905.) *White* stated:

> "In assessing the parcels from which the necessary land had not been dedicated, was it proper to measure the right-of-way assessment by the compensation paid for the strip taken? As indicated above, all the right-of-way strips, whether previously dedicated or acquired for the project, could reasonably be deemed to be of substantially the same worth in proportion to area and frontage and thus in proportion to the benefit to be

> received by the assessed parcel. The record does not show the extent to which the compensation paid may have departed from those proportionate values, but it was not unreasonable for the county to have assumed that such departures were due mostly or entirely to fortuitous variations in the processes of appraisal, negotiation, and litigation leading to the final determination of compensation. Assessing back the compensation avoided inequities based on such fortuities (e.g., making an owner who accepted the county's first offer contribute to an extraordinarily large judgment awarded a neighbor in a condemnation action). Speculation that the spreading of right-of-way costs on a basis other than assessment back might have resulted in correlating some individual assessments more closely with benefits does not invalidate the assessment methods used here, at least in the absence of mistake, fraud, or gross injustice. [Citations.]" (*Id.* at pp. 907-908.)

Accordingly, the court affirmed the trial court's judgment denying the property owners injunctive relief regarding the special assessments. (*Id.* at pp. 900, 909.) Although *White* preceded *Nollan*, *Dolan*, and *Ehrlich*, we nevertheless conclude that its general approach to reviewing special assessments remains valid. *White*'s requirement that a special assessment be *generally proportional* to the benefits received by a property from public improvements is equivalent to *Dolan*'s requirement that an exaction be *roughly proportional* to the impact of the development. (*White*, *supra*, at p. 905.) In circumstances in which a property receives special benefits from public improvements (in contrast to negative public impact caused by development of private property), we conclude a variation of the *Dolan*/*Nollan* test applies in a manner similar to

the *White* approach. The amount of a special assessment against a property must be generally or roughly proportional to the benefit received by the property from the public improvements funded by an assessment district. Because a cost reimbursement lien is a variation on the theory of special assessments, the *Dolan/Nollan* test applies in this case.

III

The Trial Court properly Denied Abrams's Supplemental Petition

Abrams contends the trial court erred by denying his supplemental petition for writ of mandate because City did not properly apply the rough proportionality test and did not provide substantial evidence to support its finding of rough proportionality between the June 1992 increase in the cost reimbursement lien and the effect his property will create because of the district improvements constructed by MSCE. Abrams appears to argue that the effect his property will have because of the MSCE improvements will be limited to creating increased vehicular traffic and there is no evidence the City considered that effect. However, in the context of a cost reimbursement district in which the assessment is imposed because of benefit to the property resulting from district improvements made by another property owner, the *Dolan/Nollan* test requires that the assessment be roughly proportional to the benefit received by the property. The issue is whether the cost reimbursement lien against Abrams's property is roughly proportional to the benefit to Abrams's property created by the district improvements.

A

In February 1990 City initially imposed a $570,948 cost reimbursement lien on Abrams's property. Abrams did not challenge that lien. In September 1990 City increased the amount of the reimbursement lien to $998,299 to reflect additional improvements and increase in the *estimated* costs of the improvements originally planned. Abrams did not challenge that increased lien. In June 1992 City increased the amount of the reimbursement lien to about $1.543 million to reflect the *actual* costs of acquiring rights-of-way from Abrams and constructing district improvements. Abrams's original and supplemental petitions challenged the June 1992 increase of about $545,000 in the reimbursement lien.

B

We initially note that the June 1992 increase in the reimbursement lien was *not* the result of any improvements not included in City's 1990 cost estimates. Rather, the June 1992 increase resulted from the fact that the *actual* costs of those improvements exceeded the original and amended cost *estimates* for those improvements. In particular, because Abrams apparently did not accept City's August 1990 amended estimate of $200,750 for acquiring his rights-of-way, the actual cost of that acquisition increased to $641,358.40 (per the stipulated condemnation award of $570,000 plus interest of $71,358.40).

Because Abrams did not timely challenge the fundamental nature of the improvements, including the acquisition of his rights-of-way, for which the cost reimbursement lien was imposed on his property, we believe he is precluded from arguing that the *cost*, whether estimated or

actual, of acquisition of his rights-of-way was not properly assessed to his property by means of a reimbursement lien. In *Abrams v. City of San Diego, supra*, D019566, we concluded the 90-day limitation period under Code of Civil Procedure section 1094.6 applied to City's imposition of cost reimbursement liens.[5] Because Abrams did not timely challenge the 1990 original and increased reimbursement liens imposed by City on his property for district improvements, which included the estimated costs for acquiring his rights-of-way, the amounts of those liens, and presumably the improvements underlying those amounts, cannot now be challenged by Abrams. Therefore, Abrams logically cannot challenge, as a general concept, the inclusion of the cost of acquisition of his rights-of-way as an element of the district improvements resulting in the liens against his property. Furthermore, he cannot challenge the fact that the district improvements, including the acquisition of his rights-of-way, benefited his property. Because Abrams's timely-filed petitions challenged only the June 1992 *increase* in the amount of the cost reimbursement lien imposed for the same district improvements, including the acquisition of his rights-of-way, he effectively waived any argument that those district improvements did not benefit his property or were otherwise improper.

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[5] Code of Civil Procedure section 1094.6, subdivision (e) provides that the 90-day limitation period applies to any "decision subject to review pursuant to [Code of Civil Procedure] section 1094.5 . . . revoking [or] denying an application for a permit, license, or other entitlement, imposing a civil or administrative penalty, fine, charge, or cost, or denying an application for any retirement benefit or allowance." A cost reimbursement lien imposed by City is in effect the imposition of an administrative charge or cost, subject to expiration in 20 years.

C

Regardless of any waiver or time-bar of Abrams's contentions, we nevertheless conclude City properly applied the rough proportionality test and provided substantial evidence to support its finding that the amount of the June 1992 increased reimbursement lien was roughly proportional to the benefit of the district improvements to Abrams's property.[6] Although the amount of the June 1992 increase was about $545,000, that amount cannot be considered in isolation or in disregard of the previously unchallenged portions of the reimbursement lien imposed on Abrams's property. The rough proportionality test requires that City weigh the benefit of district improvements to Abrams's property against the amount of the reimbursement lien. Because those district improvements did not vary in substance from the unchallenged September 1990 $998,000 reimbursement lien to the challenged June 1992 $1.543 million reimbursement lien, the additional $545,000 lien amount imposed against Abrams's property reflected only the actual, rather than the estimated, costs of those improvements and not any variation in the benefit of those improvements to Abrams's property. Therefore, the total benefit of the district improvements to Abrams's property must be weighed against the total amount of the lien, including the amount of the June 1992 increase, in applying the rough proportionality test. It would be illogical to weigh the total benefit of the

[6] Because Abrams does not contend on appeal that City did not show the *Nollan essential nexus* requirement was met, he has waived that issue for purposes of this appeal and we therefore do not discuss it.

district improvements to Abrams's property against only the amount of the June 1992 increase.

At the June 1992 hearing, Council considered Fournier's report, which incorporated Tagg's appraisal and Rick Engineering's development cost estimate. The report noted that in 1992 Abrams's property was zoned for agricultural use, which limited Abrams to improving it with only one residential unit. In a supplemental appraisal, Tagg appraised the value of Abrams's property in 1992 with its current agricultural zoning but without MSCE's district improvements to be only $225,000. If Abrams had sought to rezone the property and develop it for multi-family dwellings, he would have been required to make the improvements set forth in Rick Engineering's estimate, including those district improvements that ultimately were made by MSCE. After rezoning of Abrams's property and construction of the required improvements, his property could be developed with at least 87 multi-family dwellings. The report also noted that City would have required Abrams to dedicate, without compensation, rights-of-way for construction of Westview Parkway and Galvin Avenue. Tagg's appraisal concluded that the value of Abrams's property after MSCE's improvements was about $2.4 million, which exceeded the total reimbursement lien of $1.543 million by about $850,000. Had Abrams sought to develop his property with a minimum of 87 multi-family dwellings before MSCE constructed the district improvements, he would have had to incur improvement costs of $1.98 million, and after deducting that amount from its developed value of $2.3 million, his property's value would increase by only $320,000. Therefore, Fournier and Tagg concluded Abrams's property increased in value because of, and therefore benefited by,

the district improvements constructed by MSCE by an amount in excess of the total reimbursement lien imposed against Abrams's property. Fournier's report concluded: "The increase in the assessment to [Abrams's property] to reflect the increase in the cost of the right-of-way acquisition was directly related to the expected impact of development of [Abrams's property], and the benefits that [property] received as reflected by [Abrams's property's] resulting increased market value[,] which exceeds the total assessment." Based on this evidence, Council found that "a factually sustainable proportionality" existed between the June 1992 reimbursement lien and the benefit of district improvements to Abrams's property.

We conclude City properly applied the rough proportionality test. Its finding of "a factually sustainable proportionality" incorporates *Ehrlich*'s language test in interpreting *Dolan*, which language the trial court included in its judgment granting Abrams's original petition for writ of mandate. *Ehrlich*'s phrase "factually sustainable proportionality" is equivalent to the phrase "rough proportionality" used in *Dolan*. (*Ehrlich v. City of Culver City*, *supra*, 12 Cal.4th at p. 880.) By considering the evidence set forth in Fournier's report, Tagg's appraisal, and Rick Engineering's development cost estimate, City considered the specific impact of MSCE's district improvements on Abrams's property and weighed that impact against the June 1992 reimbursement lien imposed on his property. In so doing, City made the required individualized determination regarding the degree of connection between the exaction imposed (e.g., the cost reimbursement lien) and the projected impact (e.g., benefit to Abrams's property) of the district improvements. (*Id.* at

pp. 879-880; *Dolan v. City of Tigard*, *supra*, 512 U.S. at pp. 391, 395-396.)

We further conclude there is substantial evidence to support City's finding that the benefit of the district improvements to Abrams's property is roughly proportional to the amount of the June 1992 reimbursement lien imposed on Abrams's property. Based on Fournier's report, Tagg's appraisal, and Rick Engineering's development cost estimate, City reasonably concluded that the net value of Abrams's property increased as a result of the district improvements. Although City imposed a total reimbursement lien of $1.543 million on Abrams's property, the value of his property increased to about $2.4 million because of those district improvements, resulting in a net value of about $850,000 for his property. That $850,000 net value after the district improvements were made exceeded the $225,000 value of Abrams's property if those improvements had not been made and the property had remained zoned for agricultural use.[7] Furthermore, because the $2.4 million value of Abrams's property after MSCE's district improvements exceeded its $225,000 value before those improvements, Abrams's property value increased by over $2 million because of those improvements for which Abrams's property was assessed only $1.543 million pursuant to the July 1992 cost reimbursement lien. In addition, Abrams received $570,000 plus interest for condemnation of the street right-of-way over his property. Because no precise mathematical calculation

[7] That $850,000 net value also exceeded the $320,000 net value Abrams's property would have had if it had been developed before MSCE's improvements were made.

is required, City could reasonably conclude that the net increase in the value of Abrams's property showed there was a rough proportionality between the benefit of the district improvements to his property and the June 1992 reimbursement lien (including the $545,000 increase) it imposed on his property. Therefore, the trial court properly found that there was substantial evidence to support City's finding that the rough proportionality test was satisfied.

D

City was not required to apply the rough proportionality test based on evidence regarding current and/or projected vehicle traffic on Westview Parkway and Galvin Avenue. Abrams does not cite any case concluding that vehicle traffic impact studies are, as he asserts, the "only relevant evidence" and must be considered in applying the *Dolan/Nollan* test, and we do not find persuasive his argument in support of that conclusion. Assuming arguendo that Abrams's property, if developed for multifamily dwellings, would have little impact on the volume of current and projected traffic on those streets, City nevertheless could conclude the rough proportionality test was met because the test in the context of a cost reimbursement lien is the benefit to the assessed property, not the effect use of the property may have as a result of the district improvements. The evidence considered by City provided a sufficient evidentiary basis to support its finding that the benefits of the district improvements to Abrams's property exceeded, or were roughly proportional to, the June 1992 reimbursement lien it imposed on his property.

Abrams also argues that City was required to compare the proportionate benefit of the district improvements to Abrams's property with the proportionate benefit of those improvements to adjacent properties and the general public. However, neither *Dolan* nor *Ehrlich* expressly requires that comparison and we are not persuaded to interpret those cases to require that comparison. Abrams does not cite any case or other authority in support of his proposition.

Abrams also asserts that City's application of the rough proportionality test violated its own policy of assessing to property owners only part of the cost of street construction or other improvements. However, because Abrams did not raise this issue below, we conclude he has waived it for purposes of this appeal. (*City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1019-1020.) In any event, Council policy number 200-1, adopted in 1979, predated the decisions in *Nollan*, *Dolan*, and *Ehrlich* and therefore may be considered modified to the extent it is inconsistent with those cases.[8]

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[8] Council policy number 200-1 states in pertinent part: "Division of the cost involved in improving the City street system is based upon the following fundamental considerations: [¶] a. That portion of the street system which provides for local traffic movement and access to abutting property should be the responsibility of the property owners who receive the benefit. [¶] Streets which facilitate the movement of through traffic, or serve in a collector function, are of benefit to the general area, and this community should share the cost. [¶] Ordinarily, only features which expedite the movement of large volumes of traffic or which provide major service for other areas are of general benefit to the City and merit funding from tax sources." That policy further states: "Abutting property is responsible for improvements of local streets, or for that portion of collector and arterial streets which is equivalent to the width of a local street. [¶] . . . [I]mprovements include right-of-way,

(Continued on following page)

Furthermore, City properly applied the *Dolan/Nollan* rough proportionality test, and Abrams has not shown the City's application of that test in the use of the reimbursement district violates that policy.

DISPOSITION

The judgment is affirmed.

/s/ McDonald
McDONALD, J.

WE CONCUR:

/s/ Huffman
HUFFMAN, Acting P. J.

/s/ Haller
HALLER, J.

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grading, drainage structures, curbs, sidewalks, paving and landscaping. . . ."